

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JENNIE COURTNEY, ETC.,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 2:06-cv-600-MHT
)	
ANTHONY CLARK, et al.,)	
)	
Defendants.)	

HOLLIS & SPANN, INC.'S OPPOSITION TO
THE PLAINTIFF'S MOTION TO EXTEND EXPERT DEADLINE

Comes now the defendant Hollis & Spann, Inc. and hereby objects and responds to the plaintiff's motion to extend expert deadline (Doc. 78) filed in this cause on March 2, 2007 and in support thereof states as follows:

1. On August 9, 2006, the parties conducted a telephone Rule 26(f) meeting of the parties to discuss deadlines and discovery for this case and submitted their report of the parties planning meeting (Doc. 18). On August 21, 2006, this Court entered its Uniform Scheduling Order, which among other deadlines, instructs the plaintiff to identify experts and provide Rule 26 reports by March 1, 2007 and the defendants by April 2, 2007 (Doc. 21; Section 8). The Uniform Scheduling Order also provides that "[a]ll parties are expected to comply with each and every provision of this order in a timely manner, and extensions will be granted in only extraordinary and unforeseeable circumstances." (Doc. 21; ¶ 1).

2. On September 11, 2006, Hollis & Spann provided its Rule 26 Voluntary

Disclosure and offered to make its disclosure documents available for inspection or copying upon request. Plaintiff did not request copies of Hollis & Spann's disclosure documents.

3. On January 8, 2007, Hollis & Spann filed a Motion for Summary Judgment (Doc. 58) and its Narrative Statement of Undisputed Facts and Brief in Support of Motion for Summary Judgment (Doc. 59) demonstrating several independent legal grounds which justify an entry of summary judgment in its favor at this stage of litigation. The plaintiff failed to substantively oppose any of the grounds set forth in Hollis & Spann's summary judgment motion and on January 23, 2007, (Doc. 66) merely requested a continuance to obtain a copy of the plans and Hollis & Spann's discovery responses.

4. Hollis & Spann filed a Motion for Leave to File a Reply Brief (along with a reply brief) (Doc. 70) to provide the Court with its Voluntary Disclosure and to outline the plaintiff's failure to substantively respond to this Court's show cause order. In addition on February 2, 2007, Hollis & Spann timely provided the plaintiff with its interrogatory answers and response to requests for production, again offering documents for inspection or copying upon request. The plaintiff still has not sought to obtain Hollis & Spann's September 11, 2006 Voluntary Disclosure documents or its February 2, 2007 discovery documents.

5. Hollis & Spann has filed a meritorious summary judgment and it should not be put to the burden and expense of further litigation, discovery, or experts. Hollis & Spann's reply brief (Doc. 70, Ex. A, p. 3-4) summarizes the independent, dispositive legal grounds raised in its Motion for Summary Judgment. Hollis & Spann's work was

accepted by Covington County as complying with the plans and specifications around April of 1996. Hollis & Spann owed no duty to protect Mr. Courtney especially from the criminal acts of a third party, and the criminal acts constitute an independent, intervening cause of Mr. Courtney's death. The claims are further barred by the statute of limitations and res judicata due to a state court summary judgment entered in Hollis & Spann's favor around June 17, 2005, after a 2002 escape from the Covington County jail.

6. Hollis & Spann has offered to make documents available since September 11, 2006, and under the Uniform Scheduling Order, the plaintiff

... "shall disclose to each other the identity of ANY person who may be used at trial to present evidence under Rules 702, 703, or 705 of the Federal Rules of Evidence, and provide the reports of the retained experts or witnesses whose duties as an employee of the party regularly involved giving expert testimony, required by Rule 26(a)(2) of the Federal Rules of Civil Procedure, as follows:

From the plaintiff(s)—on or before March 1, 2007.

... "

The plaintiff's March 2nd request is not timely, and there is no extraordinary or unforeseeable circumstance given as to why this Court should extend the deadline as to this defendant.

WHEREFORE, THE PREMISES CONSIDERED, Hollis & Spann respectfully requests this Court to deny the plaintiff's motion to extend the expert disclosure deadline as to Hollis & Spann, Inc. and to prohibit the plaintiff from offering any expert testimony or opinion testimony or any other evidence under Rules 701, 702, 703, or 705 of the Federal Rules of Evidence as to the defendant Hollis & Spann, Inc. and/or alternatively, grant Hollis & Spann, Inc.'s Motion for Summary Judgment (Doc. 58).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have on this the 5th day of March, 2007 electronically filed the above and foregoing with the Clerk of the Court using the CM/ECF system which will send notification of each filing to the following counsel of record, and I have placed a copy of same in the United States mail, postage prepaid and properly addressed to each defendant inmate this 5th day of March, 2007:

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